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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MONYA BLANTON, et al.,
12 Plaintiffs,
13 v.
14 TORREY PINES PROPERTY
15 MANAGEMENT, INC., et al.,
16 Defendants.

Case No.: 15-CV-0892 W (NLS)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS [DOC. 72]**

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18 Pending before the Court is Defendants' Motion to Dismiss Plaintiffs' first two
19 causes of action for lack of subject matter jurisdiction. [Doc. 72.] Plaintiffs Monya
20 Blanton and Diane Joa oppose. [Doc. 73.] The Court decides the motion on the papers
21 submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the
22 reasons that follow, the Court **GRANTS IN PART AND DENIES IN PART**
23 Defendants' motion.

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1 **I. BACKGROUND**

2 **A. Monya Blanton**

3 Monya Blanton allegedly began renting an apartment managed by Torrey Pines
4 Property Management (“TPPM”) in September of 2011. (*Second Amended Complaint*
5 (*“SAC”*) [Doc. 13] ¶ 13.) Corinne Lampman, an employee of TPPM, allegedly told
6 Blanton during the application process that she and her three children could not rent a
7 two-bedroom apartment, but rather would have to rent a more expensive three-bedroom
8 unit.¹ (*Id.*) The SAC alleges that Blanton then rented the more expensive unit. (*See id.*)

9 According to the SAC, Blanton was pregnant with her fourth child in January of
10 2013. (SAC [Doc. 29] ¶ 14.) At that time, the apartment complex’s manager, Peggy
11 Warny, allegedly told her that her lease would not be renewed if she exceeded the
12 occupancy limit of four residents. (*Id.* [Doc. 13] ¶¶ 7, 14.) TPPM allegedly raised the
13 rent for Blanton’s apartment in May of 2013. (*Id.* [Doc. 13] ¶ 15.) The SAC alleges that
14 the next month, Blanton informed Warny that for medical reasons she could not access
15 her bank account in order to pay her July rent on time. (*See SAC* [Doc. 13] ¶ 16.) Warny
16 told Blanton that TPPM would accept her rent after the due date. (*Id.*)

17 When Blanton attempted to pay her rent after giving birth to her fourth child on
18 July 13, 2013, TPPM allegedly returned the rent payment to her by taping it to her door.
19 (SAC [Doc. 9] ¶ 17.) TPPM thereafter informed Blanton that the payment was deficient
20 for lack of late fees. (*Id.*) Before the end of July, TPPM evicted Blanton and her family.
21 (*See id.*) Blanton alleges that her eviction was a result of her violating the occupancy
22 policy. (*See id.*)

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28 ¹ Blanton alleges that TPPM enforces an occupancy policy. (*See SAC* [Doc. 29] ¶ 9.) According to the
SAC, this policy restricts occupancy to one person per bedroom plus one. (*See id.*)

1 **B. Diane Joa**

2 Diane Joa was another resident at the same property managed by TPPM. (SAC
3 [Doc. 29] ¶¶ 13, 18.) She and her five children, two of whom were minors at the time,
4 began renting a three-bedroom apartment in 2009. (*See id.* [Doc. 13] ¶ 18.) Pursuant to
5 TPPM’s occupancy policy, the TPPM manager refused to include two of Joa’s adult sons
6 on the lease. (*Id.*) In May of 2013, Joa and her family executed a new lease with TPPM
7 through Warny. (*Id.* [Doc. 29] ¶ 19.) The lease Warny prepared for Joa and her family
8 also excluded two of her children, both adults. (*See Joa Depo.* [Doc. 72-4, Exh. 1; Doc.
9 73-3, Exh. B] 12–13, 42–45; *2013 Joa Lease* [Doc. 73-3, Exh. C].)

10 On April 28, 2014, TPPM sent Joa a “Three-day Notice to Perform Conditions
11 and/or Covenants or Quit” as to the number of occupants in her unit. (*Three-Day Notice*
12 [Doc. 73-3, Exh. E].) Joa received an eviction notice three days later. (*Eviction Notice*
13 [Doc. 73-3, Exh. F].) Her adult son Michael Howard then moved out of the unit so that
14 the family could remain. (*See Michael Howard Intent to Vacate* [Doc. 73-3, Exh. G].)
15 Apparently Joa was allowed to remain, as the next year, TPPM sent Joa another notice as
16 to the number of occupants in her unit, causing to spend another \$100 to add her adult
17 son Douglas Howard to the lease. (*See Resident Change Addendum* [Doc. 73-3, Exh. I].)
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19 **C. Procedural History**

20 Joa and Blanton filed this action on April 22, 2015. (*Compl.* [Doc. 1].) The SAC
21 asserts seven causes of action against TPPM and its employees: (i) violation of the
22 federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601, et seq.; (ii) violation of the
23 California Fair Employment and Housing Act (“FEHA”), Cal. Gov. Code §§ 12927,
24 12955, et seq.; (iii) violation of the Unruh Act, Cal. Civ. Code § 51; (iv) breach of the
25 covenant of quiet use and enjoyment; (v) invasion of privacy; (vi) unfair business
26 practices in violation of Cal. Bus. & Prof. Code § 17200; and (vii) negligence. (SAC
27 [Doc. 29] ¶¶ 34–47.)
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1 Defendants now move to dismiss both Plaintiffs' first and second causes of action
2 only, on the basis that both plaintiffs lack standing.² (*See Defs. ' Mot. [Doc. 72-1].*)
3 Plaintiffs oppose. [Doc. 73.]
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5 **II. LEGAL STANDARD**

6 **A. Motion to Dismiss for Lack of Standing**

7 The Court must dismiss a cause of action for lack of subject matter jurisdiction.
8 See Fed. R. Civ. P. 12(b)(1). "The party asserting federal subject matter jurisdiction
9 bears the burden of proving its existence." Chandler v. State Farm Mut. Auto. Ins. Co.,
10 598 F.3d 1115, 1122 (9th Cir. 2010) (citing Kokkonen v. Guardian Life Ins. Co., 511
11 U.S. 375, 377 (1994)). Article III of the United States Constitution limits the subject
12 matter jurisdiction of federal courts to "Cases" and "Controversies." Lujan v. Defs. of
13 Wildlife, 504 U.S. 555, 559 (1992). This limitation forms "the core component of
14 standing[.]" a doctrine that ensures federal courts decide only those cases "that are of the
15 justiciable sort referred to in Article III[.]" those that are " 'appropriately resolved
16 through the judicial process[.]' " Id. at 560 (quoting Whitmore v. Arkansas, 495 U.S.
17 149, 155 (1990)).

18 As an "irreducible constitutional minimum" and a constraint on federal courts'
19 subject matter jurisdiction, standing is a fundamental part of every federal case. See
20 Lujan, 504 U.S. at 560; Chandler, 598 F.3d at 1122. It consists of three elements—all of
21 which the party asserting federal jurisdiction must establish: (i) injury; (ii) causation; and
22 (iii) redressability. See id.
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27 ² Defendants do not specify which causes of action they seek to dismiss. Their motion discusses only
28 the legal standards applicable to the two statutes invoked in the first two causes of action. Accordingly,
the Court construes this motion as seeking to dismiss the first two causes of action only.

1 First, the plaintiff must prove that he suffered an “injury in fact”, i.e., an
2 “invasion of a legally protected interest which is (a) concrete and
3 particularized, and (b) actual or imminent, not conjectural or hypothetical.”
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5 Second, the plaintiff must establish a causal connection by proving that [his]
6 injury is fairly traceable to the challenged conduct of the defendant.
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8 Third, the plaintiff must show that [his] injury will likely be redressed by a
9 favorable decision.

10 Chandler, 598 F.3d at 1122 (quoting and citing Lujan, 504 U.S. at 560–61) (internal
11 citations omitted).

12 Upon a 12(b)(1) motion facially attacking subject matter jurisdiction, the Court
13 assumes true all allegations of fact in the Complaint and draws all reasonable inferences
14 in the plaintiff’s favor. See Doe v. Holy See, 557 F.3d 1066, 1073 (9th Cir. 2009)
15 (quoting Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004)); see also City of Los
16 Angeles v. Wells Fargo & Co., 22 F. Supp. 3d 1047, 1052 (C.D. Cal. 2014). “In a facial
17 attack, the challenger asserts that the allegations contained in a complaint are insufficient
18 on their face to invoke federal jurisdiction.” Safe Air for Everyone v. Meyer, 373 F.3d
19 1035, 1039 (9th Cir. 2004).

20 “By contrast, in a factual attack, the challenger disputes the truth of the allegations
21 that, by themselves, would otherwise invoke federal jurisdiction.” Meyer, 373 F.3d at
22 1039. “If the moving party converts ‘the motion to dismiss into a factual motion by
23 presenting affidavits or other evidence properly brought before the court, the party
24 opposing the motion must furnish affidavits or other evidence necessary to satisfy its
25 burden of establishing subject matter jurisdiction.’ ” Wolfe, 392 F.3d at 362 (quoting
26 Meyer, 373 F.3d at 1039).

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1 **III. DISCUSSION**

2 **A. Plaintiff Diane Joa Lacks Standing to Maintain her FHA and FEHA**
3 **Familial Status Discrimination Causes of Action.**

4 Defendants pose a factual attack on the Court’s jurisdiction over Joa’s first two
5 causes of action. They present evidence that Joa could not have been injured by
6 Defendant’s allegedly discriminatory housing practice because by the time TPPM took
7 action against her because of occupancy issues, all of her children were above the age of
8 majority. (*See Defs.’ Mot.* [Doc. 72-1] 3:18–7:12.)

9 The term “familial status,” as used in the Fair Housing Act, is restricted to
10 individuals “who have not attained the age of 18 years.” 42 U.S.C. § 3602(k).
11 California’s FEHA contains the same restriction. See Cal. Gov. Code § 12955.2.

12 Defendants first leased to the Joa family in 2009. (*See 2009 Joa Lease* [Doc. 73-3,
13 Exh. A].) At that time, according to evidence filed along with Defendants’ motion, two
14 of Plaintiff Joa’s children were minors, and Defendants knew that all five of Joa’s
15 children lived with her in the apartment. (*See Joa Depo.* [Docs. 72-4, Exh. 1; Doc. 73-3
16 Exh. A] 12–13, 24–25, 26–27.) Despite apparent knowledge of the fact that six people
17 were living in a three-bedroom apartment, Defendants appear to have acquiesced to the
18 breach of their alleged occupancy policy for a number of years. (*See Id.* [Doc. 72-4, Exh.
19 1; Doc. 73-3, Exh. A] 24–25.) In May of 2013, the Joa family executed a new lease with
20 TPPM, which again included as occupants only three of Joa’s five children—who by this
21 point were all adults. (*See id.* [Doc. 72-4, Exh. 1; Doc. 73-3, Exh. A] 12–13, 42–45;
22 *2013 Joa Lease* [Doc. 73-3, Exh. C].)

23 On April 28, 2014, TPPM first began to enforce its occupancy policy against Joa,
24 when it sent her a three-day notice as to the number of occupants in her unit. (*Three-Day*
25 *Notice* [Doc. 73-3, Exh. E].) Joa received an eviction notice three days later. (*Eviction*
26 *Notice* [Doc. 73-3, Exh. F].) Her adult son Michael Howard then moved out of the unit
27 so that the family could remain. (*See Michael Howard Intent to Vacate* [Doc. 73-3, Exh.
28 G].) The next year, TPPM sent Joa another notice as to the number of occupants in her

1 unit, thereby causing her to spend another \$100 to add her adult son Douglas Howard to
2 the lease. (*See Resident Change Addendum* [Doc. 73-3, Exh. I].)

3 By the time TPPM enforced the allegedly discriminatory policy against Joa's
4 family, all members of the family had reached 18 years of age. (*See Joa Depo.* [Doc. 72-
5 4, Exh. 1; Doc. 73-3, Exh. A] 12–13 (containing the birthdates of all members of the Joa
6 family).) Thus, all of Joa's family members were outside the definition of both the state
7 and federal statutory definitions of familial status. See 42 U.S.C. § 3602(k); Cal. Gov.
8 Code § 12955.2. Even assuming for the sake of argument that TPPM's occupancy policy
9 did discriminate on the basis of familial status, by the time TPPM enforced it as to the Joa
10 family it could not have caused her harm on that basis because there was no one under 18
11 in the family at that time. Indeed, every member of the family was at least 18 when the
12 then-operative lease was executed in 2013. (*See Joa Depo.* [Doc. 72-4, Exh. 1; Doc. 73-
13 3, Exh. A] 12–13; *2013 Joa Lease* [Doc. 73-3, Exh. C].)

14 Joa contends that her minor children suffered familial status discrimination from
15 the date her family first moved in, when two of her children were still minors. (*See Pls.'*
16 *Opp'n* [Doc. 73] 5:25–6:9.) According to her, “[t]hough Joa was able to physically have
17 all of her children residing in the unit with her, Joa's children were not able to live . . .
18 with all the rights a named occupant would have on the lease.” (*Id.* [Doc. 73] 6:3–5.) Joa
19 continues, “[b]y defendants not allowing Joa to name all of her children on the lease,
20 defendants forced Joa's children to live in a precarious situation where they could be
21 evicted at any point.” (*Id.* [Doc. 73] 6:5–7.) The problem with this is that TPPM did not
22 actually enforce the occupancy policy at issue while there were any minors in Joa's
23 family. Because TPPM never enforced the policy against Joa's family until all of its
24 members had reached the age of majority, the fact that it could have done so is a mere
25 counterfactual—not a concrete injury sufficient to confer Article III standing. See
26 *Chandler*, 598 F.3d at 1122.

27 Plaintiff Joa's first two causes of action, for violation of the FHA and California's
28 FEHA, respectively, will be dismissed for lack of standing. See Fed. R. Civ. P. 12(b)(1).

1 **B. Plaintiff Monya Blanton**

2 Defendants bring a factual attack on the Court’s jurisdiction over Plaintiff
3 Blanton’s first two causes of action by contending that: (1) TPPM allowed her to move
4 into a three-bedroom apartment with three children while pregnant, thus ostensibly failing
5 to apply their own occupancy policy; and (2) TPPM ostensibly then waited a year and a
6 half after the child was born before finally evicting Blanton. (*Defs. ’ Mot.* [Doc. 72-1]
7 7:14–10:10.)

8 Even if Defendants are correct on both points, this does not imply the absence of
9 standing. Defendants fail to address allegations in the SAC that TPPM denied Blanton
10 access to a two-bedroom unit, causing her to rent a larger and more expensive unit
11 because of her familial status³—or that TPPM subsequently evicted Blanton for the same
12 reason. (*See SAC* [Doc. 29] ¶¶ 13–17.) They provide no cogent reasoning as to why
13 these injuries might be insufficient to confer standing, or as to why causation or
14 redressability might be lacking here. See Chandler, 598 F.3d at 1122.

15 Defendants’ motion as to Plaintiff Blanton will be denied.

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22 ³ Defendants represent to the Court in a footnote that, “[t]hough not at issue for purposes of this
23 [m]otion, discovery has made it apparent that “[Blanton’s] claim [as to the availability of the two-
24 bedroom unit] cannot be true, for evidence has clearly substantiated that the 2-bedroom unit . . .
25 [Blanton] alleged to have been ‘perfect’ for her had already been rented prior to her looking at the
subject unit.” (*Defs. ’ Mot.* [Doc. 72-1] 8:1 n.4.) They provide no citations to any evidence whatsoever
to substantiate these assertions.

26 Defendants are incorrect that injury in fact is not at issue in an Article III standing inquiry. See
27 Chandler, 598 F.3d at 1122.

28 As Defendants do not support their representations on this point with any evidentiary citations, the Court
disregards them.

1 **IV. CONCLUSION & ORDER**

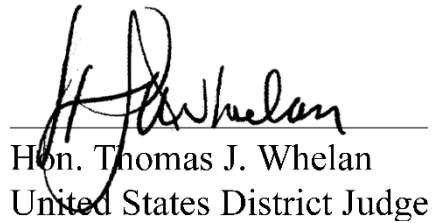
2 In light of the foregoing, Defendant's motion to dismiss for lack of standing is
3 **GRANTED IN PART AND DENIED IN PART.** [Doc. 72.]

4 Specifically, Plaintiff Joa's first two causes of action are dismissed.

5 The motion is otherwise denied.

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7 **IT IS SO ORDERED.**

8 Dated: April 20, 2017

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11 Hon. Thomas J. Whelan
United States District Judge